

*United States Court of Appeals
for the Second Circuit*



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

75-1202

b
RJS

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

DELORIS E. CANTY,

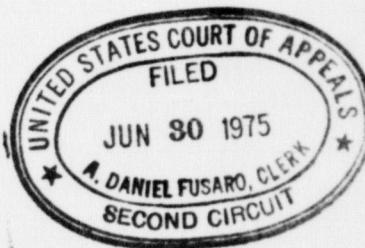
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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(4821A)

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CRIMINAL DOCKET

DOCKET ENTRIES

JUDGE WYATT

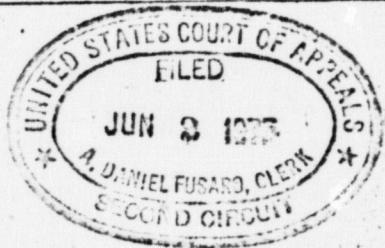
74 CRIM. 116

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
	T. Barry Kingham, AUS
DELORIS E. CANTY	791-1951
	For Defendant:
	Leonard H. Kaplan, UL 8-3718
	44 Court St. B'klyn, N.Y. 11201

(02) ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
18:656 Bank embez. by employee. (Ct. 1)					
18:1005 False bank entries. (Cts 2&3)					
(Three Counts)					

DATE	PROCEEDINGS
12-10-74	Filed indictment.
12-23-74	Deft. (atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed by Magistrate continued. (\$5,000. P.R.B.) Case assigned to Judge Wyatt for all purposes. Carter, J.
12-27-74	Filed notice of appearance of Leonard H. Kaplan as atty. for deft.
1-6-75	Pre-trial conference held. Trial Feb. 24, 1975 9:30 A.M. Wyatt, J.
2-24-75	Trial adjourned to April 6, 1975. Palmieri, J.

DOCKET ENTRIES



Cr. 1161

Page #2

74 Cr. 110

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
4-7-75	Jury trial begun before Palmieri, J.		
4-7-75	Trial continued & concluded. Jury verdict Deft. guilty on cts. 1,2 & 3. Bail continued \$5,000.00. Deft. to report once a week beginning 4-15-75 to the U.S. Attorney's Office from 9 to 4 P.M. or send in a certified mail, with same address. Not to apply for a passport or leave Southern District. Sentencing May 20, 1975 at 4:30 P.M.....Palmieri, J.		
5-22-75	Filed Judgment & Commitment. (Attorney Present) The Deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four(4) Years on Counts 1,2,3 to run concurrently with each other. Fine \$5,000.00 on Counts 1,2,3. Deft. is to surrender on Friday, May 30th 1975 at 11:00 A.M. in Room 506, United States Courthouse. Palmieri, J. Commitment Issued 5-22-75		
5-22-75	Filed deft's. notice of appeal from the judgment of conviction entered on 5-20-75. Mailed copies to Deloris E. Carty, 600 East 21st Street, Brooklyn, N.Y. and U.S. Attorney's Office.		
5-29-75	Filed transcript dated April, 28, 1975 and May 20, 1975.		

INDICTMENTTBK:wd
74-3716UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 1161

UNITED STATES OF AMERICA

:

- v -

INDICTMENT

DELORIS E. CANTY,

:

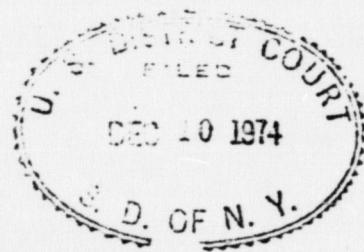
74 Cr.

Defendant.

:

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- - - - - x

COUNT ONE

The Grand Jury charges:

On or about the 12th day of November, 1974, in the Southern District of New York, DELORIS E. CANTY, the defendant, being employed as a teller at the Central State Bank, 24 West 48th Street, New York, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, did unlawfully, wilfully and knowingly embezzle, abstract and misapply moneys and funds of said bank and moneys, funds and assets entrusted to the custody and care of said bank, to wit, approximately \$20,300.00 in cash.

(Title 18, United States Code, Section 656.)

INDICTMENTCOUNT TWO

The Grand Jury further charges:

On or about the 12th day of November, 1974, in
the Southern District of New York, DELORIS E. CANTY,
the defendant, being employed as a teller at the Central
State Bank, 24 West 48th Street, New York, New York, a
bank the deposits of which were then insured by the
Federal Deposit Insurance Corporation, did unlawfully, wilfully
and knowingly, and with intent to defraud said bank, make a false
entry in a report and statement of said bank, to wit: an entry
on her Teller's Proof Sheet for November 12, 1974, that the
credits for November 12, 1974, to the Treasury Tax and Loan
Account which the defendant handled as a teller were \$14,732.18,
when in truth and in fact, as she then and there well knew, the
credits she had taken into her possession as a teller for said
account on that date totaled \$35,032.92.

(Title 18, United States Code, Section 1005.)

1 MICROFILM
DEC 16 1974

LSK:js

v

INDICTMENT

COUNT THREE

The Grand Jury further charges:

On or about the 19th day of November, 1974, in the Southern District of New York, DELORIS E. CANTY, the defendant, being employed as a teller at the Central State Bank, 24 West 48th Street, New York, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, did unlawfully, wilfully and knowingly, and with intent to defraud said bank, make a false entry in a report and statement of said bank, to wit: an entry on the Combined Teller's Proof Sheet for November 19, 1974, that the amount of Cash on Hand (Closing) for three tellers was \$260,582.07, when in truth and in fact, as she then and there well knew, the actual total cash on hand for the three tellers was \$240,282.07.

(Title 18, United States Code, Section 1005.)

John J. Ferrell

FOREMAN

Paul J. Curran

PAUL J. CURRAN
United States Attorney

2 (In open court.)

3 MR. ROSENTHAL: The Government calls Joseph
4 Bunnicelli.

5

6 J O S E P H B U N N I C E L L I, called as a witness
7 by the Government in rebuttal, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

XVXVX 10 BY MR. ROSENTHAL:

11 Q Mr. Bunnicelli, how are you employed?

12 A I work for Central State Bank.

13 Q Please keep your voice up so that we can hear
14 you back here.

15 A I work for Central State Bank.

16 Q In what capacity?

17 A I am the head teller.

18 Q How long have you been a teller with that bank?

19 A Seven months.

20 Q When did you start?

21 A August 14th.

22 Q Of 1974?

23 A Right.

24 Q Had you ever been a teller before that?

25 A Yes.

1 JGD37

Bunnicelli-direct

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2 O Where?

3 A Seamen's Bank for Savings.

4 O For how long?

5 A About three years.

6 O And did the work that you did at Seamen's Bank
7 for Savings as a teller -- was that the same or was it
8 different from the kind of work that you did at Central
9 State Bank?

10 A It is different at the savings bank.

11 O Did you have to be trained in the particular
12 practices and procedures for Central State Bank when you
13 started?

14 A Yes.

15 O Now, directing your attention to November 12th
16 of 1974, did you steal \$20,300 from anyone's cash on that
17 day?

18 A No, I didn't.

19 O How about November 19th?

20 A No.

21 O How many tellers did the Central State Bank
22 have on November 19th and on November 12th?

23 A On both dates? We have three tellers.

24 O Three tellers. And on the 19th, how many
25 tellers were at work that day?

2 A Two.

3 Q Who?

4 A Me and Deloris.

5 Q Who was absent?

6 A Alex Major.

7 Q How do you know that?

8 A I was told he was out, and I remember him being
9 out during that week.

10 Q Is there something else that causes you to
11 know that he was out (handing papers)?

12 A Yes. I prepared his proof sheet with Millie
13 Borras.

14 Q I am showing you Government's Exhibits 4D, B,
15 and E, B, D, and E. Are those the proof sheets that you
16 prepared for yourself and for Alexander Major?

17 A Yes, they are.

18 Q Are those the proof sheets that you submitted to
19 Deloris Carty?

20 A Yes, they are.

21 Q Did you substitute any proof sheets?

22 A No, I didn't.

23 Q Did you change any figures?

24 A No, I didn't.

25 Q Did you falsify any forms on November 19th?

1 JGd39

Bunnicelli-direct/Cross

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2 A No, I didn't.

3 Q Did you add any forms or subtract any forms?

4 A No, I didn't.

5 Q Did you ever use another teller's cash drawer?

6 A Not at this bank.

7 Q Did you ever use another teller's stamp?

8 A No, I didn't.

9 Q Were you ever given instructions about what to
10 do with your stamp and your cash drawer?

11 A Supposed to lock it up.

12 MR. ROSENTHAL: I have no further questions.

13 THE COURT: Did you ever use another teller's
14 machine?

15 THE WITNESS: No, I didn't.

16 CROSS-EXAMINATION

17 BY MR. KAPLAN:

18 Q Did you ever see anybody else use another
19 teller's machine?20 A Only when they're out, we have to get their
21 totals from their machines.22 Q Tell me, you now work for Central State Bank,
23 don't you?

24 A Yes.

25 Q What do you do there now?

1 JGd40

Bunnicelli-cross

189

2 A I make up payrolls and order currency.

3 Q You are familiar with the procedure at Central
4 State Bank, aren't you?

5 A More or less, I am.

6 Q AND some days do you ever close at 11:00 o'clock
7 in the morning?

8 A Me? No.

9 Q No. But do some of the tellers close at 11:00
10 o'clock in the morning?

11 A Yes.

12 Q Can you explain that to the Court and jury?

13 A We are open until 5:00 o'clock every day, and
14 at 3:00 o'clock we go on the next day's work. So someone
15 has to prove up before 3:00 o'clock and then the next teller
16 would prove after that and then I would prove.

17 Q Your voice dropped at the end.

18 A I would prove last.

19 Q And sometimes you have to start proving up at
20 11:00 o'clock in the morning, is that right?

21 A Right.

22 Q Now, when that happens, your machine is closed,
23 isn't it?

24 A Yes, it is.

25 Q You have to use someone else's machine. When I

1 JGd41

Bunnicelli-cross

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2 say "you," I mean the teller has to use somebody else's
3 machine?

4 A No. We each have our own machine.

5 Q If your machine is closed, how were you going
6 to use it, if a deposit comes in?

7 A I'm closed. I take care of no customers while
8 I am proving.

9 Q What is that?

10 A I take care of no customers while I am proving.

11 MR. KAPLAN: Your Honor, may I approach the
12 bench, please?

13 THE COURT: Yes.

14 (Off the record discussion at the side-bar.)

15 (In open court.)

16 Q Do I understand then that if your machine is
17 closed at 11:00 o'clock, that then you don't do any more
18 business for that day?

19 A No. Just during the period --

20 Q Speak up, please.

21 A Just during the period it takes to prove.

22 Q Now, is it possible for somebody else, another
23 teller, to use your machine?

24 A No, because I would be there while I am proving.

25 Q If another teller wanted to use the machine to

1 JGd42

Bunnicelli-cross

191

2 make a deposit, would you permit her?

3 A No. They have their own machines.

4 Q But would you know whether or not another teller
5 would be using somebody else's machine?

6 A Yes.

7 Q How would you know?

8 A Because I am sitting at my desk, where my machine
9 is, while I am proving.10 Q I don't mean that. Supposing someone came over
11 and wanted to use Miss Canty's machine, another teller.
12 Would you be aware of that?

13 A If it wasn't me, no.

14 Q If it wasn't you. Someone else can do it?

15 THE COURT: This is an argument. It is not
16 getting any facts. You are asking this witness to speculate
17 about your hypothesis, and I will not allow it. It is not
18 a proper question.19 Q You are fully familiar with all of the work that
20 takes place as a teller, aren't you?

21 A Yes, I would say so.

22 Q Now, the hand stamps, do you know what I'm
23 talking about? Take a look at these hand stamps, these
24 cards rather, Government's Exhibits 6A through H (handing).
25 Do you see a hand stamp in the lower right corner?

1 JGd43

Bunnicelli-cross

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2 A Yes, I do.

3 Q Whose hand stamp is that? Do you know?

4 A I can't tell the numbers. They are blotched
5 out.6 Q Can you tell by looking through 6A through 6H
7 whether or not you can tell whose hand stamp was used on
8 those cards?9 A On this one it is not too clear, but it looks
10 like a 1 right underneath the "paid." It doesn't look like
11 a 2 or a 3 to me.12 Q Is that a 1 or is that part of the markings on
13 the card?

14 A No. This is a 1. It would be the top of a 1.

15 Q The top of a 1. But that is not clear?

16 A Not clear, no.

17 Q Are there any other 1's on any of these cards?

18 A Not that I can see.

19 Q You wouldn't know which teller stamped those
20 cards up, would you, Mr. Bunnicelli?

21 A No, I wouldn't.

22 MR. KAPLAN: I have no further questions.

23 REDIRECT EXAMINATION

XXXXX

24 BY MR. ROSENTHAL:

25 Q In which drawer do you lock your hand stamp?

1 JGd44

Bunnicelli-redirect

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2 A My bottom drawer.

3 O Is that your cash drawer?

4 A Well, I have cash in there. Well, if you have
5 more cash than fits in your top drawer, you would use the
6 second drawer.7 O All of the drawers that you have you have a key
8 for, is that right?

9 A Right.

10 O The other tellers don't have a key that fits
11 those drawers?

12 A No, they don't.

13 MR. ROSENTHAL: No further questions, your Honor.

14 THE COURT: All right. Thank you,

15 Mr. Bunnicelli.

16 (Witness excused.)

17 MR. ROSENTHAL: The Government calls Irving King.

18

19 I R V I N G A. K I N G, called as a witness by the
20 Government in rebuttal, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ROSENTHAL:

24 O Mr. King, how are you employed?

25 A I am in research at Central State Bank,

* * *

1 JGD55

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2 with respect to the summations of counsel. One method is
3 for the defense to sum up first and then the Government
4 to sum up after that. The other method is to require the
5 Government to makes it main summation first, then the
6 defense follows, and then finally the Government has an
7 opportunity to rebut. So that the Government's summation
8 is broken into two parts, with the defense summation in the
9 middle.

10 We discussed this at the side-bar a few minutes
11 ago. Mr. Kaplan said he preferred the old-fashioned system,
12 which was for the defense first and the Government second.
13 So you can take it from there.

14 MR. KAPLAN: It all boils down to the same thing.
15 I don't have the last say. That's it. Do you think I am
16 telling you something from out of my sleeves or from under
17 my hat or something? I'm not. I don't have the last say.
18 The Government does. That's the way it is, and nobody is
19 objecting to it.

20 Now, if I may say this, I represent Deloris
21 Carty. My allegiance is to Deloris Carty. If I represented
22 somebody else, any one of you good folks sitting in this
23 jury box, my allegiance would be to you. If I couldn't
24 defend Deloris Carty to the best of my ability, why, then
25 I would be derelict in my duty and she would fire me as a

1 JGD56

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2 lawyer and his Honor would castigate me.

3 So I questioned every witness as closely and as
4 astutely as I could. I made objections which I thought
5 should be made on behalf of my client Deloris Canty. Some
6 objections were sustained. Other objections were overruled.
7 His Honor saw fit to make that ruling as a matter of law.
8 Nobody quarrels with any ruling made by his Honor. I just
9 wanted you to know, when I made an objection, I did it
10 because I thought as a matter of law this testimony should
11 be stricken from the record.

12 Now, this case is not a difficult case. This
13 case lasted longer than it should have lasted. This
14 defendant is charged with embezzling \$20,300 in cash, not
15 in checks, but in cash and, as Mr. Rosenthal said, this
16 cash amounted to quite a bit. When I say "quite a bit,"
17 I mean maybe it was an inch thick. It would be \$20,000 in
18 \$100 bills.

19 Well, you know how big a bundle that would be
20 of money. That's what she is charged with embezzling.

21 How did they establish this embezzlement? They
22 established this embezzlement, this alleged embezzlement, by
23 Deloris Canty by certain witnesses and by the evidence,
24 Government exhibits, which you saw enlarged.

25 You must remember, when a defendant enters a

1 JGd57

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2 plea of not guilty, she then gets -- when I say "she" I'm
3 talking about Deloris Canty, he or she -- then a halo
4 appears, an invisible halo appears, above this particular
5 person's head. This means she is presumed to be innocent
6 until her guilt is established beyond a reasonable doubt.

7 Now, this presumption stays with the defendant
8 until you good folks go into the jury room and deliberate
9 and decide whether or not her guilt has been established
10 beyond a reasonable doubt.

11 I am not going to tell you what a reasonable
12 doubt is. Mr. Rosenthal cannot tell you what a reasonable
13 doubt is. The only one who can tell you as a matter of
14 law what a reasonable doubt is, is his Honor.

15 I can submit to you, and I do submit to you,
16 that in my opinion, the defendant's guilt has not been
17 established beyond a reasonable doubt.

18 Now, why do I have that opinion? You may sit
19 back there and say, "Sure, he's her lawyer and that's his
20 opinion and that's what he should say." But let's see if
21 there can be some good reason.

22 You as reasonable people have listened to all
23 the evidence. You are the sole judges of the facts. His
24 Honor is the sole judge of the law.

25 First, it is not my intention to review the

1 JGd58

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2 evidence in this particular case. If his Honor sees fit
3 to marshal the evidence, that his Honor may do. However,
4 you are to give no greater weight to the evidence as
5 marshaled by his Honor than you would give to your own
6 judgment and your own recollection as to what the testimony
7 was of the witnesses who appeared in this courtroom.

8 The Government produced several witnesses.

9 Let's see. There was Norma Vincent, there was Millie
10 Borras, then there were rebuttal witnesses Mary McCray,
11 Mr. Bunnicelli, and another gentleman, Mr. King. Then, of
12 course, Norma Vincent was recalled.

13 You heard Miss Carty testify. You must decide,
14 is Miss Carty lying? Sure, she is an interested witness.
15 There is no question about it. She is an interested witness
16 because she is a defendant in this case. But just because
17 she is an interested witness doesn't mean that she isn't
18 telling the truth when she says, "I didn't take this money."

19 Now, the only way, the only proof that we have
20 that she allegedly took this money was from the testimony
21 of Norma Vincent and Miss McCray. But what kind of a witness
22 is Norma Vincent, don't forget, works for the bank. So does
23 Miss McCray. They are both auditors. And you will remember,
24 when I asked Mr. Bunnitelli about the hand stamps on the
25 FICA cards, he said, well, he couldn't tell whose number they

1 JGd59

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2 were, although one he thought might have been Miss Carty's.

3 But Miss Vincent was very quick to say yes,
4 the stamp made on the card belonged to Miss Carty's hand
5 stamp. This is the type of witness Miss Vincent, in my
6 opinion, appeared to be. She was a very cooperative
7 witness. But with all the witnesses, with all the witnesses,
8 the one witness they didn't produce was Steve Major.

9 Now, Mr. Rosenthal may very well say, "Well,
10 Steve Major wasn't present on that particular day," and
11 they had Irving King come in and testify to that effect,
12 and you will remember that punch card that he used.

13 Well, you see, this is a bank, and a bank, in
14 my opinion, shouldn't be making any errors. And when this
15 punch card read November 22nd and the 2 was written over
16 with ink, you can draw your own conclusions. If that's the
17 way your bank is run, take your money out of the bank.

18 The best witness would have been Mr. Major.
19 And if Mr. Rosenthal says, "Well, we couldn't locate
20 Mr. Major," then I tell you that there is no witness in
21 this world that the U. S. Government cannot locate if they
22 want to locate them. Let Mr. Major come in here and let
23 him testify, let him testify that he had nothing at all to
24 do with any missing funds. Until that testimony is given
25 to this Court, I submit that Mr. Rosenthal has not established

1 Gd60

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2 Miss Canty's guilt beyond a reasonable doubt.

3 Now, Miss Canty said that someone else can use
4 her machine. Mr. Bunnicelli said no. Mr. Rosenthal asked
5 Mr. Bunnicelli, "did you embezzle the funds?" Well, you
6 know, let's face it. Do you think Mr. Bunnicelli would
7 say that he did something if he did do it? No one is
8 accusing him of it. But he certainly, if he did have any-
9 thing to do with it, wasn't going to make any admissions.
10 He would be a very foolish young man if he did.

11 And I'm not saying that he didn't. What I am
12 saying, ladies and gentlemen, is that after all the evidence
13 and after all the numbers that we heard and after all the
14 exhibits that appeared in this courtroom and after all the
15 questions asked of this defendant, and may I say this with
16 all due respect to his Honor, the questions asked by the
17 Court have no greater significance, no greater weight than
18 the questions asked by Mr. Rosenthal or myself, and that
19 should not enter into your determination in deciding the
20 guilt or innocence of this defendant.

21 This young lady worked for several banks.
22 There is nothing to show that she was an embezzler in any
23 other bank. There is nothing to show that she ever walked
24 out with that money. She has never been convicted of a
25 crime. All they have here, ladies and gentlemen, is some

1 JGd61

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2 circumstantial evidence. What they really need here is
3 Mr. Major to come in and testify as to where he was on that
4 day and why he was absent.

5 You have a right, when you go inside, to take
6 all the testimony in this case, weigh it against your
7 every day experience and decide, as reasonable people, has
8 the Government established the guilt of Deloris Carty beyond
9 a reasonable doubt. And I think after you go inside, after
10 you exchange ideas and talk this over, you will come to the
11 conclusion that they haven't established the guilt of
12 Deloris Carty beyond a reasonable doubt.

13 Thank you.

14 MR. ROSENTHAL: Your Honor, may I be heard very
15 briefly at the side-bar before my summation?

16 THE COURT: Yes.

17 (At the side-bar.)

18 MR. ROSENTHAL: Your Honor, in view of
19 Mr. Kaplan's remarks about Mr. Major, I plan to tell the
20 jury, and I want the Court's instruction before I do, that
21 Mr. Kaplan has subpoena power, Mr. Major is equally available
22 as the witness to either side, there is no indication that
23 we have any sort of fugitive or that Mr. Major is not
24 available, and that if he wanted to call him, he could have
25 as a rebuttal witness or any other kind of witness. And I

1 JG 1

2 AFTERNOON SESSION

3 1.50 P.M.

4 (Jury present)

5 THE COURT: Ladies and gentlemen of the jury,
6 first of all I would like to express my sincere thanks for
7 the close attention that you've paid throughout the trial
8 and for your promptness in attending the sessions of the
9 court.

10 As I told you at the outset, you are the judges
11 of the facts of this case. All of the evidence is before
12 you. All of the arguments of counsel are before you. You
13 should consider them carefully. You can pick and choose
14 among that evidence, among the exhibits, among the testimony,
15 the words of the witnesses who have testified, and it is up
16 to you and you alone to decide where the truth is and what
17 significance to attach to that truth as you find it.

18 If I refer to any of the evidence, please do
19 not feel that I am trying to suggest any conclusions to you.
20 I am not. I have no desire to impinge upon your exclusive
21 fact finding function in any way, and you are entitled to
22 the opinion that evidence to which I do not refer is even
23 more important than the evidence to which I do refer. It
24 is another way of saying that you are the only judges of
25 the facts and that all of the evidence is before you.

1 JG 2

2 Now, I said at the outset, and as Mr. Kaplan emphasized
3 in his summation, and I repeat again that any questions I
4 have asked during the course of this trial were not intended
5 to be of a partisan nature. They were intended to amplify
6 or clarify matters which I thought should be placed before
7 you. If you think that I was motivated by any partisanship
8 or any desire to offend or to upset a witness, then please
9 disregard my questions.

10 I have made rulings of law, some of them in your
11 presence, some of them in your absence. Those rulings of law
12 are binding upon you and upon the parties and you are bound
13 by the instructions which I am now about to give you.

14 Please remember that your recollection of the
15 evidence is controlling to the exclusion of my recollection
16 and to the exclusion of the recollection of the evidence by
17 the attorneys. There have been a number of exhibits in the
18 case and they will all be sent into the jury room. You can
19 look at them and examine them as you choose. You don't
20 have to look at any of them if you don't want to.

21 I will also send in a copy of the indictment
22 which I am about to read so that you can look at that as a
23 matter of reference, although I warn you that it is not proof
24 of anything. And if you want to refer to the testimony of
25 the witnesses, the only way that can be done is for you to

1 JG 3

2 listen to it in open court. It can be read to you. There
3 is no way we can send it in to you. But if there is any
4 part of the testimony that you wish to hear, all you need
5 to do is to ask and the stenographer will read it to you.

6 Now, the evidence consists of the testimony out
7 of the mouths of the witnesses who have testified in this
8 case, any stipulations made by counsel, and there were
9 several stipulations made during the course of the trial,
10 and any exhibits which have been marked in evidence.

11 The stipulations had to do with the fact that at
12 all material times since February 1962 the Central Bank,
13 where the defendant Delores Canty was employed, was insured
14 by the Federal Deposit Insurance Corporation, and that the
15 defendant worked there as a teller from May to November 1974
16 and was present at the bank on November 12th and November 19th.

17 And it is further conceded that she worked as a
18 teller at two other banks for two different periods of time.

19 Now, since this is a criminal case, the burden
20 rests upon the Government and never shifts to the defendant.
21 It is the Government which has the burden of proving the
22 defendant guilty beyond a reasonable doubt and the defendant
23 is presumed to be innocent throughout the trial and throughout
24 your deliberations until such time, if that time ever comes,
25 when the presumption of innocence is overcome by proof of

1 JG 4

2 guilt beyond a reasonable doubt.

3 Defense counsel referred to the presumption of
4 guilt as a halo. I didn't want to interrupt him because,
5 after all, the defendant is entitled to the presumption of
6 innocence. But I've never heard of it referred to as a halo.
7 It is not a halo. It is a presumption of innocence. The
8 defendant is not guilty until she is found guilty beyond a
9 reasonable doubt on the facts and under law as I charge it.

10 Now, what do we mean by a reasonable doubt? A
11 reasonable doubt, which can be based, incidentally, on the
12 evidence or the lack of evidence in the case, is a doubt
13 which would cause a reasonable man to hesitate to act in the
14 more serious and important affairs in life. And if you have
15 a reasonable doubt about any of the facts that are necessary
16 to constitute the crime, then it is your duty to acquit the
17 defendant.

18 A reasonable doubt is a doubt which you have after
19 carefully weighing all the evidence. A reasonable doubt is
20 one which appeals to your reason, your judgment, your common
21 sense and your experience. Beyond a reasonable doubt does
22 not mean to a mathematical certainty or beyond all possible
23 doubt. A reasonable doubt is not caprice, whim or specula-
24 tion, and it is not an excuse to avoid the performance of an
25 unpleasant duty. It is not sympathy for a defendant. Vague,

1 JG 5

2 speculative or imaginary qualms or misgivings are not reason-
3 able doubts.

4 If, after a fair, impartial and careful considera-
5 tion of all the evidence, you are convinced of the guilt of
6 the defendant, it is your duty to convict her. If, on the
7 other hand, after such a fair and impartial and careful
8 consideration of all the evidence, you doubt the defendant's
9 guilt, you must acquit her.

10 I will now read the indictment to you, which con-
11 sists of three counts, and it will be your function to find
12 the defendant guilty or not guilty on any one or all of these
13 three counts. Each count is a separate accusation. The
14 first count charges her with embezzlement. The second two
15 counts charge her with the making of false entries.

16 Now, the charges in the indictment relate to viola-
17 tions of federal law, and the counts of the indictment charge
18 violations of Sections 656 and 1005 of Title 18 of the United
19 States Code. Section 656 reads in pertinent part as follows:

20 "Whoever, being an employee or connected in
21 any capacity with any bank the deposits of which
22 are insured by the Federal Deposit Insurance
23 Corporation, embezzles, abstracts, purloins or
24 wilfully misapplies any of the moneys, funds or
25 credits of such bank, or any moneys, funds, assets

1 JG 6

2 or securities entrusted to the custody or care of
3 such bank, or to the custody or care of any such
4 employyyyee, commits a crime."

5 And there is a reference to the penalty, with
6 which you are not concerned.

7 Section 1005, which is basic to the false entry
8 counts one and two, provides in pertinent part that:

9 "Whoever makes any false entry in any book,
10 report or statement of" -- and it refers to a feder-
11 ally insured bank -- "with intent to injure or
12 defraud such bank, commits a crime."

13 And there is a reference to the penalty, with
14 which you are not concerned.

15 Now let me read the embezzlement count and then I
16 will give you the elements of the crime constituting embezzle-
17 ment and then I will read the two false entry counts and then I
18 will give you the essential elements of the crimes charged
19 there.

20 Incidentally, embezzle means to steal or to take
21 money or property for one's own use without permission. And
22 under the law the term "embezzlement" includes any unlawful
23 use or taking of funds which are in the bank's custody without
24 permission of the bank.

25 Count one reads:

1 JG 7

2 "On or about the 12th day of November 1974, in the
3 Southern District of New York, Delores E. Carty, the defendant,
4 being employed as a teller at the Central State Bank,
5 24 West 48th Street, New York, N. Y., the deposits of which
6 were then insured by the Federal Deposit Insurance Corporation,
7 did unlawfully, wilfully and knowingly embezzle,
8 abstract and misapply moneys and funds of said bank and
9 moneys, funds and assets entrusted to the custody and care
10 of such bank, to wit approximately \$20,300 in cash."

11 And then there is a reference to the statute,
12 Section 656, which I just read to you.

13 In order to find her guilty of the crime charged
14 in count one, you must be satisfied beyond a reasonable doubt
15 of the following essential elements. And if you have a
16 reasonable doubt with respect to any one of these essential
17 elements, it is then your duty to acquit the defendant.

18 The first essential element is that on or about
19 the 12th of November 1974 the Central State Bank was a bank
20 the deposits of which were insured by the Federal Deposit
21 Insurance Corporation; second, that at the time the defendant
22 was employed by that bank as a teller; and third, that on or
23 about that date - that is, the 12th of November 1974 - the
24 defendant wilfully and knowingly embezzled or took for her own
25 use or the use of someone else approximately \$20,300 in cash

1 JG 8

2 which belonged to or was in the custody of the bank or of
3 the defendant in her position as a teller at the bank.

4 Now, I respectfully suggest, ladies and gentlemen,
5 that with respect to these first two essential elements as
6 to whether the bank was federally insured and as to whether
7 the defendant was employed by the bank as a teller, they have
8 been substantially conceded. There has been no dispute in
9 the case about them and I believe you should have no diffi-
10 culty in arriving at the conclusion beyond any possible doubt
11 that the bank was federally insured, as the first element
12 requires, and that the defendant was employed by this bank
13 as a teller on the date in question.

14 The hard core issue in the case, and the one which
15 she has repeatedly denied, both by her plea of not guilty and
16 by her testimony, is whether she wilfully and knowingly
17 embezzled and took for her own use approximately \$20,300 in
18 cash from the bank which didn't belong to her.

19 Now, counts two and three read as follows. Count
20 two:

21 "On or about the 12th day of November 1974, in the
22 Southern District of New York, Delores E. Carty, the defendant
23 being employed as a teller at the Central State Bank, 24 West
24 48th Street, New York, N. Y., a bank the deposits of which
25 were then insured by the Federal Deposit Insurance Corporation.

1 JG 9

2 did unlawfully, wilfully and knowingly, and with intent to
3 defraud said bank, make a false entry in a report and state-
4 ment of said bank, to wit an entry on her teller's proof
5 sheet from November 12th, 1974 that the credits for November
6 12, 1974 to the Treasury, tax and loan account which the
7 defendant handled as a teller were \$14,732.18 when in truth
8 and in fact, as she then and there well knew, the credits
9 she had taken into her possession as a teller for said
10 account on that date totaled \$35,032.92."

11 Then there is a reference to the statute, Section
12 1005, which I read to you a few minutes ago.

13 Count three, another false entry charge, reads as
14 follows:

15 "On or about the 19th day of November 1974, in the
16 Southern District of New York, Delores E. Carty, the defend-
17 ant, being employed as a teller at the Central State Bank,
18 24 West 48th Street, New York, N. Y., a bank the deposits of
19 which were then insured by the Federal Deposit Insurance
20 Corporation, did unlawfully, wilfully and knowingly, and
21 with intent to defraud said bank, make a false entry in a
22 report and statement of said bank, to wit an entry on the
23 combined tellers' proof sheet for November 19, 1974 that the
24 amount of cash on hand (closing) for three tellers was
25 \$260,582.07 when in truth and in fact, as she then and there

1 JG 10

2 well knew, the actual total cash on hand for the three tellers
3 was \$240,282.07."

4 And again there is a reference to the statute which
5 I read a few minutes ago, Section 1005. There will be a
6 copy of this indictment available to you ladies and gentlemen
7 so that you can refer to it.

8 Let me say again that the indictment is not an
9 exhibit. It is not proof. It is purely a procedural device
10 by which these cases are brought to trial, and it puts a
11 prospective defendant on notice of the charge which is to be
12 formally made and which is formally made by this piece of
13 paper.

14 Now, you will remember that in each one of these
15 counts the words "wilfully and knowingly" are repeated like a
16 litany throughout. The terms "wilfully and knowingly" mean
17 that you must be satisfied beyond a reasonable doubt that the
18 defendant knew what she was doing and that she did it deliber-
19 ately and voluntarily as opposed to mistakenly or accidentally
20 or as a result of some coercion. Of course, it is not
21 necessary that the defendant knew she was violating any
22 particular law. It is sufficient if you are convinced
23 beyond a reasonable doubt that she was aware of the general
24 unlawful nature of her act.

25 Now, what are the essential elements with respect

1 JG 11

2 to these two false entry charges, counts two and three?

3 Before you can convict the defendant on either of these two
4 counts, you must be convinced beyond a reasonable doubt of
5 the following essential elements, and if you have a reason-
6 able doubt with respect to any one of these essential elements
7 it is your duty to acquit the defendant.

8 First, on or about the date charged in the
9 indictment, the Central State Bank was a bank the deposits
10 of which were insured by the Federal Deposit Insurance Cor-
11 poration;

12 Second, on or about those dates the defendant
13 wilfully and knowingly made or caused to be made false
14 entries in a bank report or statement;

15 Third, that the defendant knew that the entries
16 were false at the time they were made; and

17 Fourth, that the false entries were intended by
18 the defendant to injure or defraud the bank or to deceive
19 any officer of the bank.

20 I respectfully suggest here again that the first
21 element, as to whether the Central State Bank was a federally
22 insured bank, is an issue which is not an issue in the case
23 and which I believe you should find without any trouble
24 beyond a reasonable doubt.

25 The other elements, with respect to her having

1 JG 12

2 made the false entries knowingly, with respect to her knowing
3 that they were false at the time they were made, and with
4 respect to intending by these false entries to injure or
5 defraud the bank or deceive any officer, those constitute
6 issues in the case which are vigorously disputed by this
7 defendant.

8 Now, the elements in the false entry counts
9 relate specifically to the allegation in count two that the
10 defendant made a false entry on her teller's proof sheet for
11 November 12th, 1974 by understating the Treasury, tax and
12 loan account figure and to the allegation in count three
13 that she made a false entry in the combined tellers' proof
14 sheet for November 19, 1974 by overstating the closing cash
15 on hand figure, all in an amount of about \$20,300.

16 If I recall correctly, Miss Carty has admitted
17 that she made these entries in her own handwriting and there
18 has been no dispute with respect to the authenticity of
19 these basic documents. The issue, the hard core issue,
20 with respect to them has to do with whether she knew they
21 were false at the time she made them, whether she intended
22 them to be false, and whether she made them with intent to
23 defraud.

24 With respect to the element of intent required
25 for conviction of the crime of making false bank entries,

1 JG 13

2 you must be convinced beyond a reasonable doubt that the
3 defendant made the false entries with the intent to injure
4 or to defraud the bank or to deceive a bank officer. In
5 this regard, proof of the unlawful acts accompanied by this
6 intent is enough. It is no defense that the defendant may
7 have intended ultimately to correct her wrong deed.

8 The Government has suggested to you that this
9 coincidence of \$20,300, which is the common thread throughout
10 these false entries, either by way of overstatement or under-
11 statement, is a key to your concluding, first, that the
12 false entries were intentional and, second, that they were
13 intended to cover up the theft or embezzlement of the \$20,300,
14 which admittedly the bank lost.

15 There has been no dispute in this case that the
16 bank was poorer by \$20,300. There is a very serious dispute
17 as to whether the defendant was responsible for that loss.

18 Now, there are crimes that can be proven by
19 direct evidence, when a witness sees a crime being committed,
20 or when on occasion there are even photographs or moving
21 pictures of crimes being committed. In this case there is
22 no direct evidence of the commission of any crime by Delores
23 Carty. There is circumstantial evidence, and I want to
24 define that term for you.

25 Evidence is presented to you as circumstantial

1 JG 14

2 when you are supplied with facts from which you are asked
3 to deduce that other facts also exist. You are permitted
4 to resolve disputed questions of fact on the basis of direct
5 evidence, circumstantial evidence or both. The testimony
6 of an eye witness based upon knowledge acquired as a result
7 of actual and personal observation is direct evidence of
8 what the witness observed.

9 Evidence of facts which allow you, based on your
10 common experience, to deduce or conclude that other facts
11 or events occurred is termed circumstantial evidence.
12 Circumstantial evidence is proper and competent proof.
13 Circumstantial evidence appeals to the common sense and
14 common experience of mankind, and these teach us that the
15 known existence of some facts necessarily implies that other
16 facts connected with them exist.

17 Sometimes circumstantial evidence is even more
18 convincing than direct evidence because direct evidence may
19 depend upon the memory or observation and truth of one
20 witness while circumstantial evidence may be based upon the
21 memory, observation and truth of many witnesses who concur
22 and agree or upon physical facts which cannot be mistaken and
23 which cannot speak falsely.

24 In this connection, it would be important for
25 you to examine and to understand each one of these accounting

1 JG 15

2 exhibits. Mrs. Norma Vincent, the first witness, who is
3 chief auditor of the bank, gave extensive testimony, and a
4 number of exhibits were introduced as part of her testimony,
5 to explain in detail the accounting background or panorama,
6 osto speak, of this bank shortage.

7 You will recall that there was evidence of a
8 surprise audit. She has testified, as I recall, that these
9 audits were conducted routinely on a bi-monthly basis but
10 the specific time of the audit was never announced in advance.
11 And on this particular day, November 19, 1974, the auditors
12 moved in and they made their audit and, lo and behold, they
13 found a discrepancy, a discrepancy which led them to further
14 investigation.

15 And when they worked their way back through the
16 figures, through the checks, through the cards, through the
17 tapes and all the other bits and pieces of accounting para-
18 phernalia, they discovered that on November 12th there is
19 a shortage attributable to innacurate -- I avoid saying
20 "false" because I don't want to make any implications of
21 any kind, but there were obviously inaccurate entries with
22 respect to the tax loan account.

23 You have heard as witnesses in this case Norma
24 Vincent, whom I have already referred to, who was the chief
25 auditor of the bank and who described not only the surprise
audit but she also, in addition to her detailed accounting

1 JG 16

2 testimony, gave you an account of a conversation which took
3 place with the defendant Delores Centy in the presence of
4 the other auditors. The conversation took place between
5 the defendant and Mary McCray, who was called as a rebuttal
6 witness, but in the presence of Mrs. Vincent. So you have
7 the testimony both of Mrs. Vincent and of Mary McCray con-
8 cerning this conversation when the auditors, on November 19,
9 1974, confronted Delores Centy with the differences.

10 Delores Centy in her testimony has admitted that
11 there was a shortage of approximately \$20,300. But she
12 says it hasn't been proven that it comes from "my cash."
13 She also testified about her conversation with the auditors
14 which took place at the end of the day on November 19, 1974.

15 When she was asked how she arrived at the figure
16 on her combined proof of the tellers' accounts, her answer
17 was that she didn't know. According to the testimony of
18 Mrs. Vincent and Mary McCray, I think she also said she
19 didn't know, and then she added that she didn't want to be
20 involved. And she admitted that she said she didn't want
21 to be involved, but in her testimony she said, "I said it
22 as a joke."

23 Well, now, ladies and gentlemen, you've got to
24 go over all of this testimony with respect to all of the
25 witnesses and you have to weigh it, consider it and determine

1 JG 17

2 whether or not this statement was made and whether it was
3 said as a joke or not. And the Government suggests that
4 the reason why Delores Carty didn't want to get involved is
5 because she had no truthful explanation to make and her best
6 way to avoid any embarrassment was to avoid any explanation.

7 The defendant has testified that she never
8 took the money and that she said this was a joke. You have
9 to use your good judgment, your sound judgment, your common
10 sense to look back at these events. Bring yourself back to
11 this bank on the 19th of November, on the 12th of November,
12 and try to reconstruct the circumstances as they occurred.
13 Do this carefully, fairly, with an open mind, without
14 prejudice, and don't deal in personalities or sympathy or
15 any of the other elements which might befog your good
16 judgment.

17 One of the precious gifts that you ladies and
18 gentlemen bring to the courtroom, just like a breath of
19 fresh air, is the fact that you are taken from different
20 walks of life, with all the trials and sorrows that you had
21 during your existence which have helped you to form a judgment
22 about events and about other human beings, and bring
23 to bear the use of that judgment, the use of that common
24 sense, the use of that perspective on human affairs in order
25 to help us to determine what happened.

1 JG 18

2 You are looking at the past. This evidence is
3 like a lot of flashlights or tools by which you examine
4 that past, and you have to determine whether or not on
5 November 19th and November 12th, 1974 a crime was committed
6 and whether it was committed by this defendant.

7 You heard from Millie Borras, the assistant
8 treasurer of the bank, who gave testimony about the day the
9 defendant resigned. She resigned very shortly after these
10 incidents and she explained the circumstances under which
11 she resigned. And, again, the evidence will confront you
12 with a situation in which you would be justified in finding
13 that the defendant refused to give an explanation and
14 resigned. She said she had her coat on and she said she
15 had already resigned and she did not comply with the request
16 of Millie Borras with respect to proving up her accounts.

17 Delores Carty, the defendant, took the stand.
18 She was under no obligation to do so. She could have
19 constitutionally avoided any testimony. But she took the
20 stand. And having taken the stand, she has become a witness,
21 like anybody else, and her credibility is very much in issue
22 in this case.

23 You heard from Mary McCray, the assistant auditor,
24 who was present on November 19th and had the conversation
25 in the presence of the other auditors. You heard from

1 JG 19

2 Joseph Bunnicelli, who was there on the 19th and who worked
3 for himself and for the other teller who the records indi-
4 cate was absent. You heard from Irving A. King, the
5 assistant treasurer, through whom attendance records were
6 put in evidence indicating that Alex Major, the other teller,
7 was absent. And then you heard again from Norma Vincent
8 as a rebuttal witness.

9 With respect to all of these witnesses, consider
10 the inherent probability of their testimony. Consider their
11 demeanor while on the witness stand. Did they seem to you
12 to be forthright, to be open, to be frank, to be anxious to
13 help you and to say what they wanted to say? Did they spar
14 with the questioner? Did they avoid direct answers? Did
15 they speak in such a way that they created obfuscation rather
16 than clarity? What impression did you get?

17 Did they make any contradictory statements?
18 Not that a contradictory statement necessarily castigates a
19 person. Sometimes innocent people can make contradictory
20 statements through confusion, embarrassment, strain. But
21 consider them and make some determination as to whether any
22 contradictory statements which you may have heard branded
23 the witness as a witness who could not be trusted.

24 Consider the interest of the witness in the out-
25 come of the case and consider, above all, the quality and not

1 JG 20

2 the quantity of the proof. In our law, a witness, one
3 witness standing alone, can stand against a whole roomful of
4 witnesses and against a whole roomful of exhibits, if you
5 find that that one witness told the truth.

6 Now, what do you do about a witness if you believe
7 that that witness was guilty of wilful falsehood? And the
8 charge has been made in this case, very clearly, not only
9 with respect to the defendant but it has been made by clear
10 implication with respect to Bunnicelli, who the defense
11 implies may have been the thief.

12 In determining whom you will believe and what
13 weight you will give to the testimony of the witnesses,
14 consider the nature of the evidence given by the witness;
15 his bias or prejudice, if any has been disclosed; the oppor-
16 tunity of the witness to know and remember the facts about
17 which the testimony was given; the manner and deportment
18 of the witness while on the witness stand; the candor or
19 frankness of the witness or lack of it; the interest of the
20 witness, if any, in the result of the trial; and the extent
21 to which the witness has been corroborated or contradicted
22 by other proof; and the probability, as indicated by your
23 common sense and sound judgment, that the things asserted in
24 the testimony actually existed or occurred, and such other
25 facts appearing in the evidence as will in your opinion aid

1 JG 21

2 you in determining the extent to which testimony is worthy
3 of belief.

4 You should ask yourself as to each witness what
5 interest or motive that witness may have had to testify in
6 a particular manner. If you determine that any witness has
7 a motive or interest which might have led that witness to
8 testify falsely, ask yourself has the witness done so or has
9 he told the truth notwithstanding any motive or interest
10 he might have had. And even if you do not doubt the good
11 faith of a witness, you should look out for circumstances
12 which might lead to inaccurate testimony such as faulty memory
13 or inadequate perception.

14 And here again let me stress that you will be
15 using your common sense and your understanding to assign
16 to the testimony of each witness the value and the weight which
17 best appeals to your sound judgment.

18 Now, as I said, the charge of wilful falsehood
19 has been made with respect to at least two witnesses in the
20 case, Eloces Carty and Joseph Bunnicelli, the other teller.
21 If you find that any witness told a wilful falsehood during
22 the testimony in this case, you can do one of two things.
23 You can either reject all of it on the ground that all of it
24 is tainted by falsehood and none of it is worthy of belief,
25 or you can accept that part which is credible and reject

1 JG 22

2 that part which you believe to be tainted by falsehood. It
3 is like a person eating a fruit which appears to be sound
4 and wholesome and suddenly discovering an imperfection. Some
5 persons will cut out the imperfection and eat the rest of
6 the fruit. Others will reject the whole fruit.

7 And it is pretty much what the law says you can
8 do with the testimony of a lying witness. And it depends
9 pretty much, in most cases, upon the extent to which you
10 believe the testimony is tainted by falsehood or the fruit,
11 by comparison, is tainted by an imperfection.

12 I already indicated that the defendant took the
13 stand in her own behalf, and having done so her credibility
14 has become an issue in the case and it must be considered
15 according to all the tests and subject to all the scrutiny
16 which I said should apply to each witness. As the defendant
17 has a personal interest in the result of the case, such an
18 interest creates a motive for false testimony. The greater
19 the interest, the stronger the motive.

20 In appraising the credibility of the defendant,
21 you may take his interest into consideration. However,
22 it does not follow that simply because one has a vital
23 interest in the end result the witness is not capable of
24 telling a truthful, candid or straightforward story. It is
25 for you to decide to what extent, if at all, that interest

1 JG 23

2 has affected or colored the testimony of the defendant
3 Delores Canty.

4 You may make the determination as to whether or
5 not to accept the defendant's testimony just as you would do
6 in the case of any other witness who has testified before
7 you.

8 I think I've defined intent to defraud for you.
9 But since it is contained in the indictment, I had better
10 go over it again just for a moment.

11 Intent to defraud means a deliberate purpose
12 to deprive another of something to which he is justly
13 entitled by means of artifice or deception. If a present
14 deprivation is intended, the hope or expectation of making
15 restitution at some time in the future is not a defense. To
16 find the intent which is a necessary part of this crime,
17 you must be convinced that it was the defendant's conscious
18 object to effect the deprivation. Action motivated by
19 good faith, misunderstanding of the facts or the law does
20 not involve the intent to defraud.

21 Your conclusion as to whether the defendant had
22 an intent to defraud must be based on what you find as to
23 her state of mind, the mental attitude which accompanied
24 her conduct. In this connection, you should consider the
25 defendant's own statements reporting what was in her mind

1 JG 24

2 as well as what the nature of her conduct and the attendant
3 circumstances tend to indicate about her mental attitude.
4 Each item of proof bearing on intent is entitled to such
5 weight as best appeals to your judgment.

6 You should look very carefully at all of the
7 surrounding circumstances on these two crucial dates,
8 November 12th and November 19th. What did the defendant
9 do? What are the circumstances surrounding her conduct
10 which you accept as true? And, putting them all together,
11 what do they spell out for you as an indication of the
12 defendant's state of mind?

13 Mr. Kaplan, as attorney for the defendant, said
14 that the other teller, Joseph Bunnicelli, may have been the
15 thief. He didn't say it directly and he didn't accuse him
16 of it, but it is there. It would be naive to understand
17 his remarks in the closing summation as meaning anything
18 else. If I recall correctly, he said, "Would Bunnicelli
19 say it if he did it? I'm not saying he did it. But he
20 would be a foolish young man if he did."

21 Well, now, what does that mean, ladies and
22 gentlemen? What does it mean? It means that an accusation
23 is being made against the other teller. You've got Bunni-
24 celli's testimony before you that he never committed this
25 theft. You have the testimony of Delores Carty saying she

1 JG 25

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2 never did it. But you have the overwhelming testimony in
3 the case which should lead you to believe that \$20,300 left
4 the coffers of this bank. And you've got to decide whether
5 you heard the truth from Bunnicelli or whether you heard it
6 from the defendant. Because, depending on how you decide
7 that issue, it will take you a long way in the direction of
8 deciding other issues in the case..

9 The defendant was an experienced teller. She
10 had worked for two other banks before working for this bank
11 and she has by her own testimony implied, although she said
12 it never occurred in her experience, that perhaps the basic
13 documents here are misleading because her hand stamp may
14 have been used by somebody else or her teller's machine may
15 have been used by somebody else.

16 You've got to consider that and ask yourself:
17 Was her hand stamp ever used by anybody else? Was her
18 teller's machine ever used by anybody else except by her?
19 Because, depending upon how you answer those questions,
20 those answers will take you a long way in the direction of
21 resolving the basic issues in the case.

22 When you come back from your deliberations, the
23 Court Clerk will ask you, "How do you find? Have you
24 arrived at a verdict? How do you find?" There is great
25 significance in that question, ladies and gentlemen, because

1 JG 26

2 what it means essentially is, you ladies and gentlemen have
3 taken this proof, you've heard the law explained to you, and
4 you looked into the past, you've attempted to recreate the
5 past, to recreate facts and circumstances concerning the
6 conduct of this defendant, concerning the intention of this
7 defendant. And if a crime has been committed, it has already
8 been committed. The question is, have you been able to
9 find the commission of any one of the three crimes charged
10 beyond a reasonable doubt on the basis of this evidence and
11 subject to this law as I've charged you.

12 You must not be concerned with any question of
13 penalty because that is a heavy responsibility, resting
14 solely upon my shoulders, and you should not discuss it or
15 be concerned with it in any way. You should not be motivated
16 by any question of sympathy. You have the good name of this
17 court in your hand. You are an essential arm of the justice
18 which this court dispenses, and it is up to you to respect
19 your oaths as jurors, to respect the rights of this defendant
20 and the rights of the Government in an evenhanded, unpreju-
21 diced way, on the facts and the law applicable to this case.

22 The Government is entitled to the independent,
23 conscientious judgment of each and every one of you. The
24 defendant is entitled to the independent, conscientious
25 judgment of every one of you. The law requires a unanimous

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2 verdict. But in making that requirement, it requires a
3 concensus of your independent conscientious judgments, a
4 coming together after deliberation, after due reflection of
5 a concensus of your views represented by a unanimous verdict.

6 The essence of the jury function is conscientious
7 listening and conscientious explaining. It would be wrong
8 for any juror to set himself or herself apart and refuse
9 to enter into the deliberations, to arrive at the site of
10 your deliberations with a prejudgment. It would be just
11 as wrong for any juror to monopolize the deliberations.
12 There is no room in a jury room for a wallflower or for a
13 Mr. or Mrs. Takecharge. The law expects you to listen
14 conscientiously, the law expects you to explain conscientiously
15 and then, after due deliberation, to come to a fair and
16 proper conclusion.

17 Remember that a trial is not a battle of wits,
18 it is not a contest in elocution. It is a conscientious
19 search for the truth. That's what it is supposed to be.
20 That's what it should be. And if, after leaving this
21 courthouse today, you can say to yourself that the verdict
22 was consistent with the truth, then justice will have been
23 done. If you cannot say that to yourself, then something
24 else will have happened.

25 Try to start with the facts that are undisputed.

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2 There are many facts in this case with respect to which there
3 was little or no dispute. And then work from there to the
4 more controversial aspects of the case.

5 A number of exhibits have been offered in evidence.
6 You have the individual teller proofs represented by Exhibits
7 1A through D; the general ledger sheet for September and
8 November 1974, Exhibit 2; the audit tape of the summary for
9 the audit of November 20th, which is Exhibit 3; the combined
10 proof of the tellers of November 19, 1974 prepared by the
11 defendant Carty, which is Exhibit 4A; and the individual
12 tellers' proof prepared on the 19th of November, which are
13 4B, C, D and E.

14 You have the checks for the Treasury, tax and
15 loan accounts of November 12th, which are Exhibits 5A to H;
16 the processed checks of November 12th; you have the Treasury,
17 tax and loan cards, which are Exhibits 6A to H; you have the
18 remittance lists showing the Treasury, tax and loan cards
19 submitted on November 19th and November 12th, and those
20 are Exhibits 7 and 8; then you have Delores Carty's individual
21 proof sheet of November 12th, which is Exhibit 9; the cash
22 tape and all the transactions tape, which are 9A and 9 B;
23 and then you have the chart prepared by Norma Vincent showing
24 the correct proof for November 12th, which is Exhibit 10.

25 When I say "correct proof," obviously the chart

1 JG 29

2 which has been prepared for you should be based upon whether
3 or not you accept the testimony on which it rests. You
4 can't make up exhibits for a case. These business records
5 are one thing. They come right out of the bank files and
6 their authenticity has not been disputed. So they become
7 relevant exhibits in the case for you to accept or reject
8 as you please and for you to attach whatever importance that
9 you feel or probative value you feel they deserve.

10 But where a witness prepares a chart, that is
11 purely a visual aid, an attempt to permit you to understand
12 that, certain basic facts to which she has testified or
13 which relate to other exhibits in the case. And you can
14 give the chart whatever value or probative weight you think
15 it deserves, based always upon the testimony of the witness
16 and the probative value you attach to the witness' testimony.

17 The final exhibit, 13, had to do with the attend-
18 ance sheet of that other teller, Alexander Major, who was
19 absent on the 19th.

20 Now, please, ladies and gentlemen, do not fall
21 into the trap of speculating evidence into the case. As I
22 think I've already indicated to you, a case tried before a
23 jury is not a riddle for you to solve. You are not supposed
24 to supply missing links. Detective stories and trials
25 presented for amusement on the television and in the theatre

1 JG 30

2 are frequently intended to provoke you into speculating,
3 into supplying facts which are not given. You mustn't do
4 that.

5 Here you have a body of proof, and just as a
6 pathologist looks at a slide under a microscope or a picture
7 restorer looks at an ancient picture which he is trying to
8 restore free of its grime and dust, you have this body of
9 proof and you have to exercise your judgment with respect
10 to that body of proof.

11 Use your common sense, your good judgment, but
12 with respect to that body of proof. Don't speculate evidence
13 into the case.

14 And there is another mistake you must be careful
15 to avoid, and that is to give yourselves legal advice.
16 I'll be at your service. If anything I have said is con-
17 fusing or difficult to work with once you've retired, don't
18 be timid about writing me a note and asking me to amplify
19 or make plain anything that I have covered. It is my duty
20 to make it as clear as possible and I will remain at your
21 service for the purpose of giving you any help that you
22 believe I can provide by way of supplementation or amplifi-
23 cation of my charge or in any other way. But don't give
24 yourselves legal advice.

25 The form of your verdict should be a verdict of

1 JG 31

2 guilty or not guilty as to counts one, two and three. So
3 that you have three separate verdicts to deliver and your
4 verdicts should be unanimous on each one of these three
5 counts.

6 I want to thank the alternate juror, Mr. Nardello.
7 You will not have to attend the deliberations. Please wait
8 until the jury is excused for their deliberations. But, if
9 you have any things in the jury room, you can take them out
10 and consider yourself excused. The law requires that the
11 deliberations of the jury be conducted by twelve jurors and
12 twelve jurors alone.

13 Please accept my thanks for your attendance and
14 for guaranteeing the conclusion of the trial and submission
15 of the case to the jury.

16 (The alternate juror was excused.)

17 THE COURT: Ladies and gentlemen, I must give
18 the attorneys an opportunity to confer with me before I
19 excuse you, and I will direct the Clerk to prepare all of the
20 exhibits and a copy of the indictment, and they will be sent
21 in to you. As I say, they will be available to you to be
22 given whatever examination you choose to give them. You can
23 look at them just as long as you please, but they will be
24 there for you.

25 (At the side bar)

2 MR. ROSENTHAL: I think your Honor has touched
3 all the bases. I have nothing I would ask your Honor to
4 add.

5 MR. KAPLAN: I take exception to your Honor's
6 charge, especially with respect to the marshaling of the
7 evidence. I thought it was more of an argument.

8 I also respectfully take exception to your
9 Honor's comment on my summation.

10 THE COURT: All right. I have nothing more to
11 say to the jury.

12 (In open court)

13 THE COURT: Ladies and gentlemen, you may
14 retire. I have nothing to add to what I have said.

15 (A United States Marshal was sworn.)

16 (At 2.48 p.m., the jury retired to commence
17 their deliberations.)

18 (At 3.50 p.m., the jury returned to
19 the courtroom.)

20 THE COURT: Ladies and gentlemen of the jury,
21 I have your note, which reads: "The jury has reached a
22 verdict of guilty on all three counts," signed by Mr. Sherman,
23 the Foreman.

24 I hand this to the Clerk and ask her to mark it
25 as a Court exhibit, and will the Clerk please poll the jury.

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2 (Each juror upon being asked "Is that
3 your verdict?" responded in the affirmative.)

4 THE CLERK: And so say you all.

5 THE COURT: Ladies and gentlemen, you are dis-
6 charged with my sincere thanks for your conscientious atten-
7 tion to the case, and the Clerk will advise you of any further
8 duties you may have.

9 You are excused for the balance of the day and
10 you may leave now.

11 (Jury discharged.)

12 MR. KAPLAN: Judge, if I am to make my motions,
13 may I reserve them until the date of sentence?

14 THE COURT: Yes. But there are certain matters
15 that should be disposed of now.

16 What is the defendant's bail status?

17 MR. ROSENTHAL: I believe she is released on a
18 personal recognizance bond. I have the sheet here. She is
19 released on a \$5,000 personal recognizance bond, your Honor.

20 THE COURT: I'll direct that a presentence report
21 be prepared and that the sentence be fixed for May 20th at
22 4.30 in whatever courtroom I may be assigned to. That is
23 six weeks from now, as I calculate it, a Tuesday, May 20th
24 at 4.30.

25 MR. ROSENTHAL: Your Honor, with respect to the

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2 defendant's bail, I am not going to move at this time to
3 increase it, but I would ask your Honor to direct the defend-
4 ant -- I would ask that the terms of her bail be modified so
5 that she be required to report weekly either to the United
6 States Attorney's office or the Marshal's office. I think
7 that in view of the circumstances of this case there might be
8 some propensity for the defendant to flee.

9 There is \$20,000 that is unaccounted for that the
10 defendant has. But she has been prompt in her appearance to
11 this point and I am not going to ask that she be remanded,
12 although perhaps my instincts may dictate otherwise. I would
13 like some assurance that she will appear every week.

14 THE COURT: Mr. Kaplan, you have, of course, a
15 right to entertain your own views with respect to this
16 defendant's responsibilities, but on the basis of the jury's
17 verdict she is no longer entitled to the presumption of
18 innocence and the implication is very clear that she maintains
19 custody of \$20,300 of the bank's money that she shouldn't
20 have, and it is never too late for her to make amends.

21 But if she continues to pursue this false and
22 intransigent attitude of hers, I will have to take that into
23 consideration at the time of sentence and construe that to be
24 a wilful flouting of the law.

25 I cannot sit here passively and permit this

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2 defendant or any other defendant to flout the law and make
3 crime pay. Crime doesn't pay. She put in what I consider
4 to be an utterly, I would say, unpersuasive defense, and the
5 jury apparently believed that it wasn't persuasive. I use
6 the word "unpersuasive" advisedly in order to avoid using
7 stronger adjectives.

8 But, be that as it may, it is behind us now and
9 she has been found guilty, and I hope that she will see fit
10 to correct a situation that should never have occurred.

11 MR. KAPLAN: Would your Honor consider the same
12 bail conditions? I will talk to her. And I might say for
13 the record, your Honor, that I've talked to my client through-
14 out this whole trial and before the trial began, and I will
15 talk to her again, if your Honor please.

16 THE COURT: In all my years on the bench, and
17 I've had many cases involving false entries and misapplication
18 of funds and embezzlement by bank officers and employees, this
19 is the only one I can remember where they stood trial in the
20 face of overwhelming evidence, the only one I could remember,
21 and in a way a shocking defense, which cast the blame on an
22 entirely innocent person.

23 MR. ROSENTHAL: Your Honor, may the defendant's
24 bail conditions simply be amended to require her to report
25 once a week?

* * *

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2 THE CLERK: United States of America v. Deloris
3 Cantly. Government ready?

4 MR. ROSENTHAL: Government is read, your Honor.

5 MR. KAPLAN: Defendant ready.

6 THE COURT: Does the government wish to make any
7 statement?

8 MR. ROSENTHAL: No, your Honor. Your Honor heard
9 the trial in this case and it is merely the facts and circum-
10 stances of the instant defense. The government has nothing
11 to add.

12 THE COURT: Does defense counsel wish to say anything?

13 MR. KAPLAN: Yes, if your Honor please.

14 Your Honor, since the date of the trial, since
15 the date of the defendant's conviction, I have had several
16 conferences with her concerning this case, going into her
17 background, and I questioned Miss Cantly quite closely to
18 ascertain whether or not she had any change in her attitude,
19 that is, if your Honor please, did she know anything about the
20 missing money, could she make any suggestions as to what
21 happened to the money, if she knows anything about the
22 missing money, would she be prepared to make any form of
23 restitution.

24 On each and every occasion, if your Honor please,
25 Miss Cantly has informed me that she is completely innocent,

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2 that she knows nothing about the money and that she doesn't
3 have any money and that she couldn't and under any circum-
4 stances, Judge, make restitution because she never took any
5 money.

6 I know that your Honor listened to this case.
7 I don't want to use the words "listened to this case very
8 carefully," but your Honor had certain ideas about this case a
9 and I sincerely hope that in view of Miss Carty's prior back-
10 ground, she's had no prior involvements with the law, that
11 your Honor can treat her with leniency.

12 THE COURT: Have you finished?

13 MR. KAPLAN: Yes, Judge.

14 THE COURT: Deloris Carty, is there anything
15 that you wish to say before the sentence of this Court is
16 imposed?

17 THE DEFENDANT: No sir.

18 THE COURT: I cannot hear you.

19 THE DEFENDANT: No, sir.

20 THE COURT: You see, in spite of what your attorney
21 has just said, the facts that stare me in the face are most
22 distressing.

23 You have been found guilty of having embezzled
24 \$20,300 belonging to this bank in which you worked as a
25 teller, and of making false entries in the books of account

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2 of this bank for the purpose of falsifying this embezzlement.

3 You no longer are entitled to a presumption of
4 innocence. The jury has found you guilty after a legal trial
5 on proper evidence which indicates that you took this money.6 So we stand here today with the sad factual
7 situation facing me that here you are a teller, found guilty
8 of having embezzled this large sum of money, having put in as
9 a defense that you don't know what happened to it and that
10 maybe one of two other tellers took the money. The jury heard
11 all that and they decided against you, and I have no choice
12 except to regard you as a person responsible for this embez-
13 zlement, unwilling to admit it, and legally guilty of this
14 crime.15 I have no choice except to impose what I consider
16 to be a punitive sentence in the hope that perhaps you will
17 change your mind, because the law abiding community and the
18 government which insured this money is a loser. Somebody has
19 to make up for the absence of this money and the innocent
20 people have to make up for it. You are an intelligent girl
21 who has been given the benefit of a good education. You
22 come from a poor background. It is a pity that you should be
23 here in this court today facing this sentence, and I feel
24 very sorry for you. I wish that I could show the clemency
25 that your attorney asks for but I cannot in good conscience

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2 take any view of this case other than that you are the
3 embezzler and that you have no repentance whatever with
4 respect to this matter.

5 Am I correct, Mr. Rosenthal, in understanding that
6 the maximum penalty on each count is \$5,000 fine or five
7 years in jail?

8 MR. ROSENTHAL: Yes, it is, your Honor.

9 THE COURT: I sentence you to four years imprisonment
10 on Count 1 and the payment of \$5,000 fine.

11 I sentence you to four years imprisonment on Count
12 2 and the payment of \$5,000 fine.

13 I sentence you to four years imprisonment on Count
14 3 with a payment of \$5,000 fine.

15 I direct that the prison sentences be served
16 concurrently.

17 MR. KAPLAN: Judge, --

18 THE COURT: There is a certain period of time
19 which Mr. Rosenthal is quite familiar with, during which an
20 application can be made for reduction of sentence. I invite
21 him to make such a motion if and when you have a change of
22 heart with respect to the disposition of this money.

23 MR. ROSENTHAL: I think your Honor misspoke. I
24 think you mentioned my name and I think you meant Mr. Kaplan.

25 THE COURT: Mr. Kaplan, I'm sorry, Mr. Rosenthal.

* * *

Received 7 copies of the within
appendix
this 30th day of June, 1975.

Sign John D. Gandy III AUSA
For: Paul L. Cason Esq(s).
Atty's for Appellee

